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DISLOYAL UTTERANCES GROUND FOR NULLIFYING CONTRACT WITH STUDENT BY COLLEGE.

The case of Sampson v. Trustees of Columbia University, 167 N. Y. Supp. 202, decided in Special Term of New York Supreme Court, is very instructive upon the question of the right of an educational institution, having the duty to inculcate patriotism and obedience to lawful authority, to cut off from its student body the malign influence of disloyalty in its midst.

In this case an injunction was applied for by the guardian *ad litem* of a student, who had been refused by the faculty to be allowed to complete a course in a university on the road to graduation, which it is alleged the university had agreed to extend to him. The injunction prayed for relief on final judgment and for continuance at the University *pendente lite*.

The University assigned as justification for its refusal to allow plaintiff to continue as one of its students his utterances in public addresses not within the University walls. Thus in one of these addresses he said: "We have no love for the Kaiser, but as much as we hate the German Kaiser, we hate still more the American Kaiser," and he advocated riots in resistance to enforcement of the provisions of the selective service law enacted by Congress.

The three grounds urged by the Trustees were that there had been completion of the course for the academic year for which plaintiff had been admitted; that admission there was on implied agreement that he should not "engage in any activities or take part in any movement which would involve the University in undesirable notoriety;" and that there was vested in the University a disciplinary discretion as conferred by its charter to refuse to extend its privileges to undesirable students.

The court, giving to plaintiff the benefit of all doubt on his claim to a contractual status, comes down to the third ground urged by the Trustees and disposes of that in favor of the Trustees.

Judge Mullan, presiding, said: "I think it will be conceded that the duty of an institution of learning is not met by the mere imparting of what commonly goes under the name of knowledge. By the common consent of civilized mankind through the ages, not the least important of the functions of a school or college has been to instill and sink deep in the minds of its students the love of truth and the love of country. Is such conduct as that of the plaintiff calculated to make it more difficult for the defendant University to inculcate patriotism in those of student members—if there be such unfortunates—who are without it? Does language of the sort used by plaintiff make him a real or potential menace to the morale of the defendant's student body and a blot on the good name of the famous and honored University whose degree he seeks? We are a tolerant people, not easily stirred, prone to an easy-going indulgence to those who are opposed to the very essentials and vitals of our organized social life; but there must of necessity be a limit somewhere to the forbearance that can with safety be extended to the forces of destruction that hide behind the dishonestly assumed mask of the constitutional right of free speech. To attempt to state in general terms the difference between an honest and a dishonest exercise of the wholesome right of free speech that our Constitution so completely and properly respects would be as vain as it would be unprofitable here. * * * To counsel resistance to the draft ordained by lawful authority in accordance with our form of government is as culpable as it is cowardly. * * * Whether the plaintiff's conduct comes within the accepted definitions of sedition or treason, I have not concerned myself to inquire."

The principle of the right of free speech standing for anything else than a bare right and covering a course of conduct in any and all situations is as foolish as to say, that a man having the natural right to curse and swear, if he so inclines, may do this in any company or in any place without being branded for indecency or without becoming subject to arrest for conduct provoking a breach of the peace. Words are acts in some situations and, if in exercising a constitutional right, they are lost sight of except in the influence they create or the opprobium they bring upon another, it is words as acts that are considered and not words as speech.

We are interested, however, in the view discussed as regards teaching being more than education of man as an animal, and not as a human being. To say that our policy goes further than imparting knowledge and includes the instilling of correct principles of conduct and love of country, assumes, that our states are far from Godless in their recognition of the right of its citizens to worship God or not worship God, as their consciences may dictate. At bottom it is the right of conscience that is guaranteed. There is no misprision of treason in our land, but of overt acts we take account.

At all events, if our educational institutions have no power to inculcate the observance of loyalty to the country that supports them, we erect, then, a system that has in it the seeds of its own destruction. It becomes a reproach and not something to be lauded. It is passsing strange, that the burden of our regulatory laws are borne uncomplainingly by our loyal citizens, but when there is encountered one who is so seditiously inclined that he would destroy government itself, he is as voluble in claiming rights thereunder as if he really believed it lawfully established and deserving of ungrudging support. It hardly may be deemed an assault on free speech to classify his utterances as noxious vapor.

NOTES OF IMPORTANT DECISIONS.

WORKMEN'S COMPENSATION ACT — ELECTIVE ACT APPLIES TO NON-RESIDENT EMPLOYE INJURED IN ANOTHER STATE.—In State ex rel. Chambers v. District Court, 166 N. W. 185, decided by Supreme Court of Minnesota, it was held that where an employe, who was a non-resident of the state and employed as a traveling agent to solicit business, was injured by an automobile furnished him by his employer, who had elected to come under the Minnesota Workmen's Compensation Act and be bound thereunder, the fact of the injury happening in another state did not take it out of the provisions of the act.

After speaking of the act being elective the court said: "That under our act there is a contract obligation is clear. The weight of authority supports the view that under an elective act like ours and with facts such as are present, an accidental injury though it occurs outside the state is compensable. This view we adopt. * * * A basic thought underlying the compensation act is that the business or industry shall in the first instance pay for an accidental injury as a business expense or a part of the cost of production. It may absorb it or it may put it partly or wholly on the consumer if it can. The economic tendency is to push it along just as it is; to shift the burden of unrestrained personal injury litigation. When a business is localized in a state, there is nothing inconsistent with the principle of the compensation act in requiring the employer to compensate for injuries in a service incident to its conduct sustained beyond the borders of the state. The question of policy is with the legislature. It may enact an elective conpensation act bringing such result if it chooses."

While it has been held that a state compensation act could not interfere with service and remedies for injuries in interstate transportation, this was because congress had occupied that field, otherwise it is conceivable it would apply. Just as remedies against interstate carriers for injuries theretofore depended on state law, so as to those in interstate matters, where congress has not intervened.

But the thought is that the policy of a state under a workmen's compensation act can be enforced is as against business having its *situs* there. And we have little doubt that this is true. There is a contractual relationship governed by local statute. It seems evident this is valid, and we discover no difference in a workmen's compensation act being compulsory

or elective. The policy is as much concerning the welfare of the business as in the interest of employe, and to have differing rules as to injury occurring within the state and outside the state, is to militate against the plan as an entirety.

DIVORCE—DECREE AS TO LAND IN ANOTHER STATE.—Bates v. Bodie, 38 Sup. Ct., 182, decided by U. S. Supreme Court, reverses the Supreme Court of Nebraska, which rendered judgment in favor of a divorced wife obtaining a decree in Arkansas, upon the ground, that the land owned by the defendant in Nebraska, not being embraced in the Arkansas suit, could be taken into account in action in Nebraska upon the Arkansas decree and new finding there made as to what the defendant ought to pay his wife, because of his ownership of such land.

The interesting question, or rather the series of questions, thus presented receive no solution at the hands of U. S. Supreme Court, because it was held, that the state court of Arkansas, though having no particular jurisdiction over Nebraska land, was shown by the evidence to have taken their ownership into consideration in the rendition of the decree.

Possibly U. S. Supreme Court decision holds that, whether this ownership was actually taken into consideration or not, this was within the scope of the judgment rendered by Arkansas court and it operated as an estoppel in Nebraska in the later suit for fixing the amount of alimony. The ruling by U. S. Court leaves this somewhat in a state of uncertainty.

Speaking of the contention, that the Arkansas court did not take into consideration ownership of the Nebraska land, it was said: "This proposition is based on the record, which the (Nebraska) Supreme Court said: 'Shows that the (Arkansas) court did not in fact make any allowance on account of the Nebraska lands,' and resort is had to parol testimony for the purpose of limiting the decree. But we cannot give the testimony such strength. It is conflicting. It consists of the impression of opposing counsel and of the private opinion of the court orally delivered in direction for the decree."

Speaking of the recollection of the trial judge it was said: "His view was that the court had jurisdiction of the parties, and held it had not of the land in Nebraska, but it did have jurisdiction to consider its value in determining the amount of alimony."

It seems to us that U. S. Supreme Court should have said whether or not Arkansas court could or not take the Nebraska land into consideration, for such purpose and if Nebraska court found it did not, its holding should have been sustained upon conflicting evidence, if as matter of law it had the right to consider the evidence at all.

COMMERCE—INTOXICATING LIQUORS IN TRANSIT THROUGH PROHIBITION STATE.—In Moragne v. State, 77 So. 322, the Supreme Court reverses a ruling of Alabama Court of Appeals holding that one transporting intoxicating liquors through the prohibition state of Alabama en route from Georgia to Florida came under the law of Alabama by virtue of provisions of the Webb-Kenyon Act.

The court said that the trial court and the court of appeals held that Alabama prohibition statute in connection with the Webb-Kenyon act prohibited such carrying through Alabama. "Where the holding of the Court of Appeals correct, then it would follow that there could not be an interstate shipment through this state along the public highways thereof from one person to another of intoxicating liquors, even though the shipping point and the point of delivery be in different states and neither in this state." It was thought that an attempt to effect such a result would be to make the statute unconstitutional.

It would seem that this is true, however plausibly it might be claimed, that the use of highways which come under a state's police power *pro tanto* is a submission to state power. The same reasoning would paralyze effort of interstate commerce commission to prescribe rates in interstate transportation. The history of the exercise of such power by such commission is against the validity of such a claim. It, however, would seem to be different, were there a rest in the intermediate state and then, resort were had to a local company under complete control of the state to aid in a delivery. This is a new question that lately has been considered in two cases, involving the same subject matter, one case by Supreme Court of Kansas and one by a federal district court. State ex rel. Kaster v. Landon, 96 Kan. 372, 152 Pac. 22; Landon v. Pub. U. Comm. 245 Fed. 950. There the effect of storing gas and distributing it through pipes to customers in cities is considered. As to this the state and federal court are in opposition. It seems to us the state court takes the sounder view. An article on this subject will shortly appear in this journal.

POWER OF MUNICIPALITY HAVING RIGHT TO LICENSE OR PROHIBIT SALE OF INTOXICATING LIQUOR, TO AIM AT THE LATTER UNDER GUISE OF PROHIBITORY LICENSE LAW.

Licensing, Regulation and Prohibition.—It is quite usual for statutes to vest in cities and towns the right to license, tax, regulate and (or) to prohibit the sale of intoxicating liquors. And in such event ordinances in fixing licenses so onerous as to be virtually prohibitory have been upheld. Thus it is stated in Cyc.[1] that as the Legislature having unlimited control over the liquor traffic, may fix a license fee at any sum in its absolute discretion and no one can complain that this is in effect prohibitive, "the same rule applies in the case of a municipal corporation which by its charter or a general statute possesses full control over the traffic." And it has been ruled that the power to license cannot be used to suppress useful occupations.[2] This view has been taken, as for example, by the Supreme Court of New Mexico[3] distinguishing between grants of power to "license or regulate" and where the grant was to "license, regulate or prohibit."[4]

But it has been said that: "When prohibition is the object, the end may generally be more directly accomplished by legislation which by its terms is prohibitory, than by the circuitous method of imposing a burden difficult or impossible to be borne; and the direct method is consequently the one usually adopted."[5] And in a Georgia case[6] the court, *arguendo,* said: "We think the best way to prohibit is to prohibit." The court argued further, that if the ordinance in question had been aimed at usurers, this might be different, but it said nothing specific regarding sale of intoxicating liquor. This kind of a sale stands, it is conceivable, differently from the practicing of usury. Contracts are respected as to the one, but not as to the other, thing.

(1) 23 Cyc. 149.
(2) McQuillin, Municipal Corporations, 992, citing cases.
(3) Schwartz v. Gallup, N. M., 165 Pac. 345.
(4) See also Dennehy v. Chicago, 120 Ill. 227, 12 N. E. 227; Tenny v. Lenz, 16 Wis. 566; State v. Cassidy, 22 Minn. 312, 21 Am. Rep. 765.
(5) 2 Cooley on Taxation (3rd ed.), p. 1134.
(6) Morton v. Macon, 111 Ga. 162, 36 S. E. 627.

Strict Construction of Powers Conferred on a Municipality.—In discussing the grant of powers to a city or town as a governmental agency, it is to be remembered that "it is a well settled rule of law, that a municipal corporation has only such powers as are expressly conferred by its charter, or by some other legislative enactment, or which are necessarily implied from the general objects and purposes of the municipality, or implied from some other power expressly granted by the legislature."[7] And upon this principle it is endeavored herein to inquire whether under a power conferred on a municipal corporation to license, regulate or (and) prohibit the selling of intoxicating liquor in its limits, a municipal corporation, when it undertakes, by ordinance, to license, regulate or prohibit, the doing of each being within its conferred powers, it may, under guise of the exercise of one of such powers, aim at the other. For example, if a city may license, may it do this as a means of regulation or with the purpose to suppress or prohibit? Thus it is said in a Virginia case,[8] that where a city charter empowers it to wholly prohibit the sale of intoxicating liquors or license such sale, the only limitation on such a grant is its exercise in good faith. Is it an attack on the exercise of good faith to show that a license fee is not intended as a regulation, but as a means of prohibition? This language in that case was used merely *arguendo,* but does it not suggest a negative pregnant? Certainly an ordinance to prohibit sales could have no relation to licensing sales. May one to license have any relation to prohibition of sales?

(7) Gambill v. Endrich Bros., 143 Ala. 506, 39 So. 297.
(8) Danville v. Hatcher, 101 Va. 523, 44 S. E. 723.

Regulation by a City Having Right to Prohibit.—Waiving for a moment the question whether a license is a means of regulation, there is now considered whether any regulation, *quoad* regulation, may be justified by a city which has the right absolutely to prohibit.

In a North Carolina case,[9] where regulations were attacked as unlawfully stringent, it was said: "It (the Legislature) had the right to have absolutely prohibited the intestate or anyone else from selling liquor within one mile of the corporate limits of the city of Raleigh. This it did unless the party selling obtained a license from the city authorities. And instead of this right to do so with the permission of the city authorities being a restriction, its effect was to relax the prohibitory rule, and to grant him a right he did not otherwise have. * * * How he was damaged by having this privilege, this option, which he chose to accept, we are unable to see." The question in mind is not strictly what I am attempting to discuss, but it leads in that direction. There is closer approach to it in a later case by this same court.[10] That case said: "It was argued in this court for the defendant, that, as the board of aldermen were given the power to prevent the sale of intoxicating liquor within the city limits, therefore, under the maxim that 'the greater includes the less,' ordinance regulating and restricting the traffic, if the aldermen should see fit not to prevent, but to license, whether reasonable or unreasonable, were matters in their discretion and not reviewable by the courts. We think that is not the proper view of the powers of the aldermen, or of the rights of those who may be licensed to sell liquor by the board. They, as we have said, had the right to prevent or prohibit entirely the sale of liquor. They also had the power to license the traffic and to regulate it, and having adopted as a choice the plan of licensing and then regulating, it must follow that the regulations and restrictions must be such as are reasonable, and their reasonableness must be in case of contest finally decided by the courts."

This excerpt shows, that the power conferred is of several things, distinct in their nature, and the exercise of one may or not exclude exercise of the other—if the city licenses, it does not prohibit; if it prohibits, it does not license. It has the power to license as a policy, but to say this may be exerted for the purpose of prohibiting, is to confer on a tribunal of strict powers, something not reasonably embraced in the grant of power. How an ordinance enacted by a city for license with a real purpose of prohibition would work is exemplified in a Georgia case.[11] The court said: "It may be that in cities where the sale of liquor is lawful under license, it would not be easy to convict a person charged with a violation of an ordinance prohibiting the possession of liquors for the purpose of unlawful sale, as it would be in a town or city where the sale of liquors was entirely prohibited. When the sale of liquor is entirely prohibited, its possession in such quantities, or at such places, as would be necessarily inconsistent with the idea of its being on hand for private consumption only, would be a strong circumstance tending to show that the possession was for the purpose of sale. * * * In a city where the sale of liquor would be lawful under license, the possession of any quantity in any place consistent with the license would not be even a circumstance to be considered by the court trying a person for having liquor in his possession for the purpose of sale contrary to the license laws."

This reasoning shows that license and prohibition are in a measure antitheses, and were so regarded, at least by the Georgia court.

(9) Bailey v. Raleigh, 130 N. C. 214, 41 S. E. 281, 58 L. R. A. 178.

(10) Paul v. Washington, 134 N. C. 363, 47 S. E. 793, 65 L. R. A. 902.

(11) Paulk v. Sycamore, 104 Ga. 728, 30 S. E. 417.

Constitutional Provisions as to Caption of Legislation.—In a Michigan case,[12] it is said: "That the power to regulate is not power to prohibit has been many times decided (Black on Intoxicating Liquors, § 227, note 56), and it is admitted by counsel for the village that the power to suppress or prohibit is not power to license or regulate. The contention is that power to suppress the business in the village is power to suppress it in a part of the village; that the power to prohibit entirely implies and includes the power to prohibit some—to partly prohibit. This contention, although apparently plausible, cannot, in my judgment, be sustained. I am satisfied that the legislative intention is to give to villages the option to wholly interdict and prohibit the business within municipal boundaries. * * * There is not an option to both permit and suppress."

The court thereupon proceeds to speak of the enumeration of powers stated in the alternative and says: "This specific enumeration of powers is indicative of an intention to differentiate." And further along it is said: "An ordinance imposing a large license fee would probably result in suppressing all saloons in this village. No one will contend that such an ordinance could be sustained as an exercise of the power to suppress saloons. If it were matter merely of grave doubt whether the power to pass this ordinance exists, the application of the rule that the doubt should be resolved against the existence of the power would operate to avoid the ordinance."

In Iowa,[13] where by statute towns were authorized to prohibit sale of intoxicating liquor and also to grant licenses for sale thereof, there was conviction under an ordinance for "regulating the use and sale of intoxicating liquors," but in the body of the ordinance, it was seen to be entirely prohibitory. It was said of the ordinance: "Its whole scope is an absolute prohibition of the sale of any and all kinds of liquors." This was held invalid under constitutional provision regarding titles of acts expressing their subject-matter. It was said: "Instead of the title of this ordinance being a clear statement of its subject, it is wholly inconsistent with it and states a wholly different subject—as different as is regulation from prohibition."

While this is not absolutely determinative of the question in mind, namely the right to prohibit by an ordinance to license, yet it is pertinent as showing that an ordinance for licensing is confined to that subject or it is not an exertion of a conferred power to accomplish what is aimed at.

Difference Between Regulation or License and Prohibition.—In Kansas,[14] it was held that where a city had the power "to enact ordinances to restrain, prohibit and suppress tippling shops," the power to "restrain" was not synonymous with that to "prohibit" or "suppress," and applying the rule in the Sainer case an ordinance to restrain would not include the purpose to prohibit or suppress. "It does not contemplate an absolute destruction of the business, but rather a placing it within bounds." This ruling seems not nearly as close as in a Missouri case,[15] where it was held that a local option act prohibiting "sale" of intoxicating liquors did not cover the case of one making a gift of liquor as a matter of courtesy or hospitality, notwithstanding that it had been previously held, that where a gift was a mere subterfuge, in violation of law, it would be embraced.[16]

In Alabama,[17] it was held violative of the constitution of that state for the title of an act intending only to prohibit sale for its body to forbid the giving away or otherwise disposing of liquors.

(12) Timm v. Caledonia Station, 149 Mich. 323, 112 N. W. 942.

(13) Cantril v. Sainer, 59 Iowa 26, 12 N. W. 753.

(14) Emporia v. Volmer, 12 Kan. 622.

(15) State v. Fulks, 207 Mo. 26, 105 S. W. 733, 21 L. R. A. (N. S.) 430.

(16) Ex parte Handler, 176 Mo. 383, 75 S. W. 920.

(17) State v. Davis, 130 Ala. 148, 30 So. 344, 89 Am. St. Rep. 23.

These cases seem illustrative of the point, that things regarded as distinct in their nature must not be confused in legislation and especially in ordinances of a city, a tribunal of conferred powers. However, they may be related to each other, in a general way, yet they must not be distinguishable as independent grants of powers.

Power to Regulate as Sustaining Regulation as to Screens and Blinds.—One of the leading cases regarding right of regulation and its extent is an Indiana case.[18] There it was held that an ordinance of a city prohibing the use of screens, blinds, stained glass or anything to obstruct the view of the interior of saloons, did not come under general authority to license and regulate them.

The court premises its discussion with the statement that municipal corporations are vested only with conferred powers and those incidental thereto and that what is not strictly within these limits is void. The statute under which this ordinance was enacted authorized cities "to regulate and license all places kept for the sale of liquors," and "to regulate all places where intoxicating liquors are sold to be used in the premises." In discussing this grant of power it was said: "The Legislature has not said here what distinct or particular acts may be done by the corporation. It has not said that municipal corporations may pass ordinances of the kind here involved. If it had, that would end the inquiry. As it has not, by the uniform current of authority, ordinances passed under such a general grant of authority must be reasonable, consonant with the general powers and purposes of the corporation and not inconsistent with the laws or policy of the state, otherwise it is the duty of the courts to declare them void."

Getting down to the ordinance as concerning the business of liquor selling, it was referred to as one subject to regulation as an illegitimate business, but it was said legislation has not proceeded upon this idea, but upon a recognition of the business as legitimate, yet subject to restraint so as to lessen its evils. The ordinance therefore was held void, as not being conferred by express power or necessary implication therefrom. Surely if this is so, so much the more is it true, that an ordinance to regulate or to license does not include purpose to prohibit.

In a later case in Indiana,[19] this case was approved, but the ordinance was held valid under express grant of power to cities to "divert the arrangement and construction" of doors, windows and openings of rooms where liquors are to be drunk.[20]

It has been held that a power to prohibit, regulate or control the sale of liquor extended a general grant of power beyond what a general power to regulate embraced,[21] but the court spoke ***dubitante*** as to a city's right to make it unlawful for any barkeeper, etc., to enter a saloon during Sundays, but as that did not appear clearly unreasonable, it was sustained. Here it is seen, that the fact that a business is harmful does not extend the principle of strict construction of conferred power to a municipal corporation.

Citation by Court of Authorities to the Principle of Prohibitive Legislation by means of License.—Later than the ruling in Schwartz v. Gallup, ***supra,*** the Supreme Court of New Mexico has confirmed the ruling in that case,[22] citing as the only case opposed, the Paulk case, ***supra,*** and a number of cases as supporting its ruling.

Thus it cites in support a case by U. S. Supreme Court.[23] But that case only goes

(18) Champner v. Greencastle, 138 Ind. 339, 35 N. E. 14, 24 L. R. A. 768, 46 Am. St. Rep. 390.

(19) Delphi v. Hamling, 172 Ind. 645, 89 N. E. 308.

(20) See also Greencastle v. Thompson, 168 Ind. 493, 81 N. E. 497.

(21) Paul v. Washington, 134 N. C. 363, 47 S. E. 793, 65 L. R. A. 902.

(22) Stalick v. Gallup, N. M., 168 Pac. 707.

(23) Phillips v. Mobile, 208 U. S. 472, 28 Sup. Ct. 370, 52 L. ed. 578.

to the effect that under police power, sale of liquor may be either prohibited or regulated by the imposition of license. Who disputes that proposition? It was said in this case: "The higher the license, it is sometimes said, the better the regulation, as the effect of a high license is to keep out from the business those who are undesirable and keep within reasonable limits the number of those who may engage in it." This is not saying that license may be used as aiming at prohibition. On the contrary, the implication is the other way. If it aimed at monopoly, it would certainly be opposed to the genius of our institutions. And if it aimed at classification not reasonably based, it also would.

So also seems opposed a New York case that is cited.[24] This speaks of the double purpose in imposing a license "to discourage the business and to secure indemnity in part to the public from the losses and burdens which the business is likely to entail." If there is a "double purpose," there can be only a single purpose when it aims at prohibition, and if it is doubtful, whether one of these things may be disregarded, an ordinance of a municipality is to be declared void, because of conferred power being strictly construed.

Also is cited an Indiana case.[25] In that case a license was imposed by a city having the power "to tax, license and regulate distilleries and breweries." There was no attempt to prohibit and it would seem there was no right to prohibit. It was claimed the license was excessive and distinction was drawn between the liquor and other businesses, because the former was tolerated and therefore police power by means of license may "limit and discourage" it. This is far from saying a tribunal with conferred power may positively forbid it. On the contrary, this state has expressly declared that the power to regulate the liquor business does not justify an ordinance "rendering it practically impossible to conduct it at all."[26]

Also is cited a Missouri case.[27] This case concerned the validity of a liquor inspection act, and merely announces the principle that as there was power in the legislature absolutely to prohibit the sale of intoxicating liquors, it could impose any conditions or restraints upon such traffic as it saw fit. But this is far from saying, that when it confers power on a municipality to regulate, it also confers power to prohibit. This was discussion of an act of the legislature and not of an ordinance at all.

There are then cited a case from Wisconsin,[28] and one from Illinois.[29] The former of these cases concerned a statute "to regulate and license the keeping of dogs." The opinion justified the statute as of a kind with those authorizing imposition of license upon liquor selling, saying that thereby police power may "impose such sums for licenses as will operate as partial restrictions upon the business." I think this is an authority opposed to the court's ruling. "Partial restriction" is not total restriction. In the other case the grant of power was "to tax, license and regulate auctioneers, distillers, brewers, lumber yards, livery stables, public scales, money changers and brokers." An ordinance thereunder imposing a license on a brewer was assailed as not being reasonable, and it was denied that the police power of the city was limited to the imposition of a reasonable fee. None of the cases cited seem in point to the question before the court.

But there is also referred to R. C. L. Intox. Liquors, § 42. That section, in speaking of license, says that a license fee cannot be objected to "merely because it is large," but "this, however, does not imply

(24) People v. Murray, 149 N. Y. 367, 44 N. E. 146, 32 L. R. A. 344.

(25) Schmidt v. Indianapolis, 168 Ind. 631, 80 N. E. 632, 120 Am. St. Rep. 385, 14 L. R. A. (N. S.) 787.

(26) Steffy v. Monroe City, 135 Ind. 466, 35 N. E. 121, 41 Am. St. Rep. 436.

(27) State v. Bixman, 162 Mo. 1, 62 S. W. 828.

(28) Tenny v. Lenz, 16 Wis. 566.

(29) U. S. Dist. Co. v. Chicago, 112 Ill. 19, 1 N. E. 166.

that the power in this respect is unlimited. It is plain that the exaction of a fee so large as to be prohibitive or confiscatory, or to manifest an abuse of power, cannot be sustained." This subject in R. C. L. is treated under § 72, where it is stated, in effect, that the right to impose license fees may not be so unreasonable as to be prohibitive.

Conclusion.—It appears to me that the North Carolina court is sustained by textbook and authority, which appears to be the only case directly in point sustained by the principle of conferred power on a municipal corporation being strictly construed, and according to the case of Champner v. Greencastle, *supra,* if there is doubt, the ordinance in the Gallup cases ought to have been held void.

St. Louis Mo. N. C. COLLIER.

LIMITATION OF ACTIONS—SET-OFF.

LUSCHER et al. v. SECURITY TRUST CO. et al.

Court of Appeals of Kentucky. Jan. 10, 1918.

199 S. W. 613.

Where intestate had more than 15 years previous to her death paid a note as surety for her son, and the claim had become barred by the statute of limitations, other heirs and the administrator could not set off such claim as against the claim of the son to a share in the estate, since it was not a part of the same transaction, and not properly the subject of set-off, and, being barred in the hands of intestate, was barred in the hands of her estate.

CARROLL, J. There is one question of law presented by this record, and it is this: In the settlement of the estate of a decedent, can one of the heirs be charged with a debt due by him to the decedent that is barred by limitation? It comes up on this state of facts: Charlotte Stahel, in April, 1893, was compelled to and did pay a note for $1,000 on which she was the surety of her son George C. Stahel. In 1916 Mrs. Stahel died intestate, and after her death one of her children brought a suit to settle her estate. In this suit it was charged, and stands admitted, that Mrs. Stahel paid, under the circumstances stated, the $1,000 note, and it was sought to set off this sum with interest from the date of its payment against the distributive share of George C. Stahel in the estate of his mother. George C. Stahel for defense relied alone on the statute of limitation in such cases made and provided, and the lower court held that the plea of the statute presented a good defense, and from that judgment this appeal is prosecuted by Emma Luscher, a daughter of Mrs. Stahel, who was plaintiff in the suit below.

It is admitted by counsel for Emma Luscher, the appellant, that as Mrs. Stahel paid this $1,000 note in the ordinary course of her liability as a surety, an action by her, if she were living, to recover the amount so paid from George C. Stahel, would be barred if it had been brought when this suit was begun. But it is said that in a suit to settle the estate of a person who dies intestate, or in the settlement of an estate without a suit, the statute of limitation does not run against a debt or demand due by one of the heirs or distributees to the intestate, and that there may be deducted at any time from the share of the estate to which the heir would be entitled the amount of the debt or demand due by him to the intestate at the time of her death. So far as our investigation, which has been much aided by that of counsel in the case, goes, this question is a new one in this state, and curiously enough there are not many decisions of other courts directly in point.

If the sum paid by Mrs. Stahel for her son could be treated as an advancement, there could be no question that the son should be charged with it in the distribution of his mother's estate, because section 1407 of the Kentucky Statute provides, in part, that:

"Any real or personal property or money, given or devised by a parent or grandparent to a descendant, shall be charged to the descendant or those claiming through him in the division and distribution of the undevised estate of the parent or grandparent; and such party shall receive nothing further therefrom until the other descendants are made proportionately equal with him, according to his descendible and distributable share of the whole estate, real and personal, devised and undevised."

There is, however, no contention that this indebtedness should be treated as an advancement within the meaning of the statute. On the contrary, it is affirmatively admitted that when Mrs. Stahel became liable as surety on the note of her son, and afterwards was obliged to and did pay the note, the ordinary relation of creditor and debtor was thereby established

between her and her son, and that she simply had a claim against him for the amount paid as his surety, the collection of which she might have enforced in the same manner that she could have enforced the collection of any other indebtedness. There being then no attempt to treat the matter as an advancement, and no evidence in the record on this subject, as the case went off on demurrer, the question recurs: Should the amount paid by the mother as surety, with interest thereon from date of payment, be deducted from the distributable share of George Stahel in the estate of his mother, although it was admittedly barred by the statute of limitation applicable to such demands, at the time of her death? Of course if this indebtedness had not been barred by the statute, there would be no difficulty in the way of setting it off against his distributable share.

Section 2514 of the Kentucky Statutes, fixing the period in which certain actions must be brought at 15 years from the date of their accrual, and section 2515, fixing 5 years as the time when certain actions must be brought after their accrual, are substantially the same in so far as the nature of the bar interposed by the statute is concerned, although a different period of time is fixed and the sections apply to different states of case. Joyce v. Joyce, 1 Bush, 474. It is therefore not material which one should be applied here; and as the cause of action in Mrs. Stahel to recover the amount paid as surety accrued when she paid the debt, which was more than 15 years before her death, we may, for the purpose of the case, look to section 2514, which provides, in part, that:

"Civil actions, other than those for the recovery of real property, shall be commenced within the following periods after the cause of action has accrued, and not after: * * * Upon a bond or obligation for the payment of money or property, or for the performance of any undertaking, shall be commenced within fifteen years after the cause of action first accrued."

But the argument is made that this statute merely precludes the maintenance of an action for affirmative relief if it is not brought within the prescribed time, but does not operate to defeat the assertion of a claim by the estate of an intestate against a distributee for the purpose of defeating or reducing the right of the distributee to participate in the estate, because as said by counsel for the estate, this character of relief is negative in its nature and not embraced by the statute, which does not put an obstacle in the way of the estate's retaining at any time out of the share of a distributee a debt due by him to the estate.

We do not, however, find ourselves able to agree with counsel in the soundness of the distinction attempted to be made. If the estate of Mrs. Stahel had sought to collect by action from George Stahel the amount paid by his mother as surety, there could be no question about his right to plead and rely on the statute in bar of the action, and as he could defeat the collection of the demand by interposing the statute of limitation, there seems to be no good reason why he should not also be permitted to plead and rely on the statute when the attempt is made to collect the demand by deducting it from his share of the estate. So far as the rights of the estate and the rights of George Stahel are concerned, the collection of the demand by an independent action, or the collection of it by deducting the amount from his portion of the estate, would have precisely the same effect, as in either event the estate would get the money. It is therefore plain that if the distinction sought to be made applicable is controlling, the statute must be ignored, because it makes no distinction between the right to collect a demand due an estate by an independent action and the right to collect it by deducting the amount from the share of the estate going to the debtor.

It is said, however, that in Aultman & Taylor Co. v. Meade, 121 Ky. 241, 89 S. W. 137, 123 Am. St. Rep. 193, 28 Ky. Law Rep. 208, Weakley v. Meriwether, 156 Ky. 304, 160 S. W. 1054, and in other cases therein cited, this court has held that the statute of limitation can be successfully pleaded only to an action asserting affirmative relief, and is not available as a mere defensive plea. But the cases in which this rule was announced presented states of fact in which it was sought to defeat by plea of limitation the right of the defendant to assert by way of counterclaim transactions connected with and growing out of the matter that was the basis of the suit, and the rule that in such cases the statute of limitation will not operate to bar the defense is well illustrated in the Meade Case. There the Aultman & Taylor Company had sold Mead a sawmill, and in a suit by the company to collect its debt, Meade set up as a defense the value of the sawmill that he alleged the company had taken possession of and converted to its own use. The company interposed a plea of limitation to this defense, but the court held that the statute was not available, saying:

"If such mortgagee, by virtue of his mortgage contract, and not as a tort-feasor, takes the mortgaged property to be applied upon the mortgage debt, is it not his agreement, as part

of the mortgage contract, to so apply it? And if he fails to do so, is not that a matter purely of defense in a suit to recover the balance of the mortgage debt, as much as would be a plea of payment? We think it is. Having reached this conclusion, the disposal of the plea of limitation becomes simple."

But here there is no connection whatever between the claim of George Stahel to his distributive part of the estate and the demand asserted by the estate against him on account of the payment of the surety debt. These two matters are separate and distinct, not arising out of the same contract or transaction. In other words, the indebtedness sought to be deducted by the estate was in the nature of a set-off, and it has been held in Williams v. Gilchrist, 3 Bibb, 49, and Hawthorne v. Roberts, Harding, 75, that:

"A debt, to be pleadable as a set-off, must be a mutually subsisting debt at the time of bringing the suit. But a debt barred by the statute of limitations is not a subsisting debt, and so cannot be pleaded as a set-off or given in evidence."

We are also referred to Brown's Adm'r v. Mattingly, 91 Ky. 275, 15 S. W. 353, as sustaining the right of the estate to deduct this indebtedness, but this case, while it recognizes the right of an administrator to plead as a set-off a distributee's indebtedness to the estate against the distributee's interest therein, does not hold or even intimate that the right to plead the indebtedness as a set-off would be available if the debt due by the distributee were barred by limitation. Of course where the claim of the estate against the distributee is not barred by limitation, and is a valid and subsisting debt against the distributee, there can be no doubt about the right of the estate to rely on the claim as a set-off against the distributee's interest. It should, however, be said that the contention of counsel for the estate that the statute does not bar the right to deduct from the share of a distributee or legatee a debt due by him to the estate is supported by Williams on Executors, vol 2, p. 619, where it is said:

"An executor may retain so much of the legacy as is sufficient to satisfy a debt due from the legatee to the testator, although the remedy for such debt was at the time of the death of the testator barred by the statute of limitation."

But this text finds its principal support in English cases, although, as said by Woerner on American Law of Administration (2d Ed.) vol. 2, § 564, the same doctrine is held by some American courts, and he refers to the cases of Wilson v. Kelley, 16 S. C. 216, Holmes v. McPheeters, Adm'r, 149 Ind. 587, 49 N. E. 452, and Tinkham v. Smith, 56 Vt. 187. It should, however, be observed that in some of these states the subject is regulated by statute, and in others the courts treated the indebtedness of the heir or legatee as an advancement. But opposed to the English rule referred to by Williams on Executors is Allen v. Edwards, 136 Mass. 138, where the court held that a debt due from a legatee to the testator, which was at the time of the testator's death barred by the statute of limitation, could not be deducted from the legacy, unless the language of the will clearly showed that the testator intended that such deduction should be made.

In Holt v. Libby, 80 Me. 329, 14 Atl. 201, the question was clearly presented to the court, and it was held that the executor could not deduct from a legacy a debt due by a legatee to the estate which was barred by limitation, the court saying:

"The estate is just as much of a debtor to the indebted legatee as the legatee is to the estate. Each has a legal right and remedy, and the statute-barred debt is not more recoverable by the estate than by any other creditor. To our minds, this is the better doctrine."

In the case of Light's Estate, 136 Pa. 211, 20 Atl. 536, 537, the same rule was announced, the court saying:

"If the statute can be pleaded with effect when the decedent's estate is a debtor, we can see no good reason why it may not be pleaded also with like effect when the estate is a creditor; if the running of the statute should be stopped by the death in one case, why not in the other? There is no necessity arising out of the administration of the law, or the practice in equity, which calls for any such distinction; the legatees were as much entitled to the protection of the statute as any other creditor. Admitting the right of an executor, or of the heirs, in the distribution of a decedent's estate, to set off the debts of the legatees against their legacies, the debts, to constitute a valid set-off, should be valid, subsisting debts, not barred by the statute."

In Richardson v. Keel, 9 Lea (77 Tenn.) 74, the court said:

"We do not perceive the principle upon which it can be held that while suit upon the claim is barred by the statute, so that there can be no judgment or recovery upon it, yet the administrator may appropriate the effects of the defendant, which he holds in trust for him, to the payment of the barred debt."

To the same effect are Boden v. Mier, 71 Neb. 191, 98 N. W. 701; Kimball v. Scribner, 174 App. Div. 845, 161 N. Y. Supp. 511.

Having no statute in this state making any exception referable to claims asserted by an estate against a distributee, we are disposed to the view that the general statute of limi-

tation is as applicable in this class of cases as it is in others. It may be true, as urged by counsel for the estate, that to allow George Stahel to get his full distributive share of the estate, while denying the estate the right to deduct his indebtedness, would be unjust to the other heirs and distributees; but if so the injustice was not worked by the law but by the failure of Mrs. Stahel to collect or attempt to collect her debt before it was barred by the statute, or to put it, as we may assume she might easily have done, in such form as that its life would have been extended. But at least there is no more injustice in allowing the statute to defeat a meritorious claim like this than there is in allowing it to defeat the collection of other just demands, as is often done.

The judgment is affirmed.

NOTE.—*Bringing into Hotchpot Advancements Barred as Demands by Statute of Limitations.*—To me it seems that the rule declared by the instant case is one of injustice. A statute of limitations is merely a statute of repose. The moral obligation remains and the defense may be waived. An advancement is not made on the theory of creating a demand against the heir. It is more like a gift subjecting the donee to the principle of equality in final distribution. By relation forward it brings possession of what has been previously received down to the time of final distribution, with implied obligation to account for permissive use in advance by way of interest on such use. There seems or may seem some opposition to this theory in the peculiar facts in the instant case, but this does not seem to me important, if as a matter of fact the payment as surety might be considered an advancement at all. For example, the surety might recover from the principal a different interest, under the contract, than what might be charged for the use of an advancement. Even, however, if an advancement may be sued for this is a matter of election by donor.

Now let us see the cases supporting the view, that a statute of limitations does not apply where advancements are brought into hotchpot.

But in many states it has been ruled that interest on the advancement between its making and the death of donor is not to be computed, because this would be to convert the gift into a loan. Conner v. Shehee, 129 Ala. 588, 30 So. 95, 87 Am. St. Rep. 78; Clark v. Helm, 130 Ind. 117, 29 N. E. 568, 14 L. R. A. 716; Tart v. Tart, 154 N. C., 502, 70 S. E. 529, Ann. Cas. 1912 A. 952.

In Osgood v. Breed, 17 Mass. 358, it was said: "It would be entirely contrary to the character of an advancement, that it should be viewed in the light of a debt upon interest. The very claim in this case proves that such could not have been the intention of parent or child. Fifty-six years elapse from the time of the advancement to the settlement of the estate in the probate office; to that the interest if allowed would amount to nearly four times as much as the sum advanced. If this allowance could be made, few children would be willing to take an advancement and run the hazard of having their estates swallowed up by it, as might frequently happen."

It occurs to me that charging interest to donee would militate against equality, because had no advancement have been made the use of it by donor would presumptively have greatly increased his estate for final distribution. If donee is charged interest the contribution falls on him alone.

A later case is Allen v. Edwards, 136 Mass. 138, where it was held that a debt due by legatee barred at the time of testator's death, could not be deducted from his legacy, unless the will showed clearly it was to be deducted. But that was a case where the Massachusetts court was construing a statute and not where a court acts upon the general principles of equity. It was thought that the right to sue for a legacy under statute made the matter altogether different. We think this is not to change the relation between testator and legatee, but merely between the latter and executors who hold in trust. Besides, advancement to a legatee and to a child or heir stands differently or may so stand.

In Kimball v. Scribner, 161 N. Y. Supp. 511, 174 App. Div. 845, New York Supreme Court in Appellate Division, there is admission that several prior rulings by such division had recognized the English chancery rule, that the statute of limitations was not to be regarded in favor of a legatee, but it was said there are authorities in other jurisdictions opposed. As no Appeals Court decision was found in New York, this case seems to have regarded itself as not bound to follow prior decision, and it refused, wherein an action at law the defense was set up. I do not think that in this country there is the difference between remedies at law and those in equity that obtained in England. It is the right of the matter on whatsoever rule of the court that is looked to. If a rule existed in England in equity as enforcing a rule of right, that rule of right would be given effect here, though it might be denied enforcement there in a court of law. Many states expressly declare, that there are not two sides—equity and law—but cases are determined according to the facts, notwithstanding that in one case the old machinery or processes in equity or common law, as the case may be, are used in a remedial way. It is only as to remedies that rules are technical; not as to substantial justice. C.

BOOK REVIEW

COLLIER ON PUBLIC SERVICE COMPANIES, 1918.

A new book in the field of public utilities is that under the title, "Public Service Companies," by Needham C. Collier, LL. D., of the St. Louis bar, formerly a judge of the Supreme Court of New Mexico, at present Editor-in-Chief of the Central Law Journal.

The work begins with an exposition of the common law regarding a service as to which, under franchise of the Crown, there has been a common charge, with that charge to be reasonable and demandable by all properly applying for the service, and as to common carriers and innkeepers, regulated in England under police power.

In early colonial days, as this book shows, this practice and duty received recognition both explicitly and implicitly and in early legislation soon after our colonies became states of the Union. Oft in decision it was shadowed forth, especially in recognition of the limited monopoly arising out of special privilege with correlative obligation under common law principle. It remained, however, for statute to extend this rule.

In the early seventies of the nineteenth century this extension began to take on concrete form, as instance the beginning of state commission laws regarding the great modern highways—the railroads. Especially notable, however, was the Illinois statute regarding warehouses, their regulation and rates. Challenge of this statute evoked the great case of Munn v. Illinois, 94 U. S. 113, in which the principle declared by Lord Hale regarding ports and wharves was held applicable, these warehouses exercising what was held to be a virtual monopoly at a port of departure for the great grain regions of the northwest.

From the time this case appeared a nebulous something in our jurisprudence took shape under the skillful hand of Chief Justice Waite, and lawmakers and judges began spelling out its possibilities and applying it to various enterprises depending on favors in franchises and on exercise of the right of eminent domain. Finally the police power, as for example, in insurance, added its contribution to the swelling tide of the rule of regulation.

Eleswhere no more interesting development in our jurisprudence than in this has appeared, and Mr. Collier has attractively presented its growth. Furthermore, he has made manifest the practical necessity for its study by the practitioner, as well as by the student, his discussion being buttressed by authority from all of the courts, federal and state. His effort is a veritable treatise, logical in arrangement, and of easy reference by aid of his table of cases and well constructed index. The story of the rise and development of public utilities regulation reads like a romance in the law and its decline is far distant.

To the text there is added an annotated appendix of procedural sections of state commission laws, especially useful to local practitioners, in connection with the main text.

The work is attractive in its binding of law buckram, and comes from the well known law book house of F. H. Thomas Law Book Company, St. Louis.

C. P. BERRY.

HUMOR OF THE LAW.

The face of the young man was rueful, and the lawyer he was interviewing looked exceedingly grave. It was a clear case of breach of promise, and the man of law could see nothing but heavy damages as the ultimate outcome. And he read the riot act to some purpose to the young man, who waxed restive.

"Oh, yes," he said, impatiently, "I know all about it. The same old song, 'Do right and fear nothing.'"

"No, no; that's not it at all," said the old lawyer, smiling shrewdly. "What I meant to impress on you was, 'Don't write and fear nothing.'"—Rochester Evening Times.

Two Massachusetts towns were building a bridge jointly and a joint town meeting was being held to arrange the distribution of the financial burden. Naturally every man from Blakely was bound to look keenly after the interests of his own town, and nobody from Peru could permit Blakely to put anything over. Words were exchanged between the watchdogs of the treasury on either side. Motives were questioned. In short, there was language. One of those present, speaking with asperity and emphasis, said: "I'd rather be the meanest man in Blakely than the leading citizen of Peru." Whereupon a selectman of Peru replied: "Well you've got your rather."

Former President Taft, during his recent visit to Texas, said at a dinner:

"There is a story which illustrates the importance of keeping our Judges out of business or trade.

"It's a story about a Magistrate who was a flour and feed dealer. A farmer was brought before the man for failing to notify a case of cattle disease. The Magistrate delivered judgment as follows:

"'You are fined \$5 for this offense, with \$2.50 costs, making \$7.50 and \$9 you owe me for your last bill of feed, or \$16.50 in all—\$16.50 or 30 days."—Detroit Free Press.

WEEKLY DIGEST

Weekly Digest of ALL the Important Opinions of ALL the State and Territorial Courts of Last Resort and of ALL the Federal Courts.

Copy of Opinion in any case referred to in this digest may be procured by sending 25 cents to us or to the West Pub. Co. St. Paul, Minn.

1. **Acknowledgment** — Husband and Wife.—Court properly admitted deed from husband and wife, notary's certificate to wife's acknowledgment failing to state she was known to him, or that proof was made of her identity; certificate in question having been made May 2, 1879, before the statute requiring such statement took effect.—Fortenberry v. Cruse, Tex., 199 S. W. 523.

2. **Adoption**—Inheritance.—In Rev. St. 1909, § 1671, authorizing adoption of a "child" as the "heir" of the adopting parent, the quoted words include, under statute of descents and distributions, transmission of the faculty of inheritance by the child's death.—In re Cupples' Estate, Mo., 199 S. W. 556.

3. **Assault and Battery** — Collision. — That driver of automobile was violating speed ordinance when he collided with another automobile, held not in itself to make him guilty of assault.—People v. Hopper, Colo., 169 Pac. 152.

4. **Assignment for Benefit of Creditors**—Management.—Where trustee for creditors employed insolvent debtor to manage property, such fact did not destroy legal transfer of property to trustee or permit creditor by obtaining judgment and levying execution to secure payment of his debt in full.—Meakim v. Ludwig, Wash., 169 Pac. 24.

5. **Attachment**—Desert Claim.—Attachment on desert claim before entryman has complied with all preliminary acts prescribed by law for acquisition of title thereto creates no valid lien on entryman's inchoate right or after title is acquired.—Stockman's Nat. Bank of Ft. Benton v. Hofeldt, Mont., 169 Pac. 48.

6. **Attorney and Client**—Appointment.—As attorney of infant suing by next friend derives authority solely from next friend, he is not clothed with authority to receive payment of judgment in favor of infant and satisfy same.—Paskewie v. East St. L. & S. Ry. Co., Ill., 117 N. E. 1035.

7. **Attorney and Client** — Compensation.—Where administratrix, suing for death of deceased for benefit of widow, agreed to pay per cent. of recovery to attorney, and widow compromised case, attorney is only entitled to percentage based on amount received by widow, and issue of damages cannot be litigated for purpose of allowing recovery of percentage of amount thereof.—Davis v. New York Cent. & H. R. R. Co., N. Y., 167 N. Y. S. 868.

8.——Private Detective.—If an attorney, hiring a private detective, acts on behalf of his client, whom he discloses, without assuming liability, the attorney is not personally liable to pay for such services.—Riley v. Tull, N. Y., 167 N. Y. S. 918.

9. **Bailment**—Burden of Proof.—Where plaintiff left a suit of clother with defendant to be cleaned, and defendant's shop was broken into and the suit stolen, plaintiff, suing for its value, had burden of showing some negligence on part of defendant.—Lewis v. Troiani, N. Y., 168 N. Y. S. 48.

10.—Notice of Lien.—Where repairer was given an automobile for a complete overhauling and the owner permitted to use it before it was tested in the usual manner and the owner returned it and requested more work to be done on it, the machine was not delivered within L. O. L. § 7498, relating to time for filing notice of lien after delivery, until the work was completed.—Pierce Arrow Sales Co. v. Irwin, Ore., 169 Pac. 129.

11.——Relationship.—Where a railroad allowed a servant to place household goods in a shanty car and live there, it is not liable as a bailee of such goods when destroyed by a flood.—Matthews v. Carolina & N. W. Ry. Co., N. C., 94 S. E. 714.

12. **Bankruptcy**—Trustee.—Bankruptcy trustee is not estopped from recovering corporate funds diverted to paying private debts of officers by alleged consent of directors and stockholders since trustee also represents corporate creditors.—McCullam v. Buckingham Hotel Co., Mo., 199 S. W. 417.

13. **Banks and Banking**—Cashier.—Where a cashier of a bank discounts a note and converts part of the proceeds to his own credit instead of the credit of the maker, the bank is liable.—Phillips v. Hensley, N. C., 94 S. E. 673.

14.——Draft.—Where draft with bill of lading attached is indorsed to bank for collection, it is entitled to receive remittance and give full acquittance to those paying draft.—Bank of Madrid v. Merchants' Nat. Bank of Middletown, Ala., N. Y. 77 So. 167.

15.——Notice.—Where the director of a creditor bank, while not representing the bank,

prepared a resolution for a corporation, he is not presumed to have informed the bank of what he ascertained in the transaction, being under no obligation to do so.—Watt v. German Sav. Bank, Iowa, 165 N. W. 897.

16.——Trover.—Payee of bank check may maintain trover against drawee bank, which pays the check to an unauthorized person, who falsely represents himself to be the payee's agent to indorse check and receive the proceeds.—Louisville & N. R. Co. v. Citizens' & Peoples' Nat. Bank of Pensacola, Fla., 77 So. 104.

17. **Bills and Notes**—Corporation.—Where a bank lends money solely on the credit of the officers of a corporation receiving notes signed by such officers individually and not by the corporation, such notes are not obligations of the corporation, although it used the money and the amount was carried on its books as bills payable.—Watt v. German Sav. Bank., Iowa, 165 N. W. 897.

18.——Filling Blanks.—Where one signs a note in blank and gives it to another, who fills in the name of the payee and the amount, the signer is liable on the note to any holder in good faith.—Phillips v. Hensley, N. C., 94 S. E. 673.

19.——Payment.—Where bank intentionally and uninfluenced by fraud accepted the check of a depositor on his account with it in payment of another's note, which was canceled, marked "Paid," and surrendered to depositor, and the check was charged against the depositor's account and stamped "Paid," the note maker's obligation was discharged.—Broad & Market Nat. Bank of Newark v. New York & Eastern Realty Co., N. Y., 168 N. Y. S. 149.

20. **Carrier of Goods**—Estoppel.—Estoppel is not available as a defense to action for balance of freight for interstate shipment, part of which only, through mistake in computation, was collected on delivery.—Bush v. Keystone Driller Co., Mo., 199 S. W. 597.

21.——Monopoly.—Pipe line companies, owning oil fields, and transporting only oil products thereof, or purchased by them from other producers for the operation of their own business, not constituting a monopoly of the transportation, are not common carriers of oil, within Const. art. 12, § 23, or St. 1913, p. 657, and need not file schedules of rates with the railroad commission.—Associated Pipe Line Co. v. Railroad Commission of California, Cal., 169 Pac. 62.

22.——Refrigeration.—Where precooling of refrigerator cars took place after delivery of fresh vegetables to carrier, negligence in precooling and icing cars is attributable, not to shipper, but to carrier.—Wells Fargo & Co. v. Sprague, Tex., 199 S. W. 657.

23. **Carriers of Passengers**—Alighting From Car.—Where street car is slowed down within few feet of its regular stopping place, it is not negligence on part of carrier to permit passenger apparently in full possession of his physical and mental faculties to step off car. —Gipson v. Shreveport Traction Co., La., 77 So. 129.

24.——Baggage.—Where passenger's suit case containing baggage, as defined by Railroad Commission, was delivered for transportation, but articles were not found in it when suit case was returned to passenger, railroad was liable for value.—Texas & N. O. R. Co. v. Levy, Tex., 199 S. W. 513.

25.——Baggage.—Despite statute regulating railroad passenger's allowance of baggage, under statute creating Railroad Commission, held that commission had power to classify baggage, and to fix what articles shall constitute such for transportation, determining it shall consist, among other things, of articles carried as samples by traveling salesmen.—Texas & N. O. R. Co. v. Levy, Tex., 199 S. W. 513.

26.——Mileage Ticket.—Where plaintiff purchased from defendant's agent mileage book having stamped thereon that it would not be good over certain line, defendant was not liable for refusal of such line to accept coupons, although defendant's agent represented that coupons were good over such line.—Alabama Great Southern R. Co. v. Vermillion, Ala., 77 So. 67.

27. **Commerce**—Employes.—Congress intended by legislation on liability of railroads for injury to employes in interstate commerce to take exclusive control in order to make liability uniform throughout United States, and it is to be determined by provisions of legislation itself and general common law as administered by federal courts.—Panhandle & S. F. Ry. Co. v. Brooks, Tex., 199 S. W. 665.

28. **Constitutional Law**—Speed Laws.—Ordinance of St. Louis prescribing maximum speed for automobiles of eight miles an hour in business districts and ten miles elsewhere is not invalid as denying equal protection of the laws. —City of St. Louis v. Hammond, Mo., 199 S. W. 411.

29. **Contracts** — Exclusive Rights. — Where the plaintiff, who possessed a business organization adapted to the placing of such designs and indorsements as plaintiff might make or approve, entered into agreement for exclusive right to handle and sell all such or license others to market them, and take out copyrights, and in return defendant was to have one-half of "all profits and revenues" to be accounted for monthly, an agreement that plaintiff would use all reasonable efforts to market such indorsements and designs was implied, and the contract is not void for want of mutuality and consideration.—Wood v. Lucy, Lady Duff-Gordon, N. Y., 118 N. E. 214.

30.——Illegality.—Where, pursuant to agreement that plaintiff, a married man should divorce his wife and marry defendant, plaintiff advanced money and performed services for defendant, transaction was illegal, parties indulging in immorality, so notes given by defendant to reimburse plaintiff, defendant refusing to consummate agreement, are tainted with illegality.—Olson v. Saxton, Ore., 169 Pac. 119.

31.——Repairs on Property.—Owner of motorboat which plaintiff repaired under contract with third person in possession is not by reason of mere fact of his ownership liable for repairs.—Miller v. Fisher, Miss., 77 So. 151.

32. **Corporations**—Burden of Proof.—Defendant admitting that he received corporate checks drawn by officer in payment of private obligations has burden of showing such officer's authority to draw upon corporate funds for private purposes.—McCullam v. Buckingham Hotel Co., Mo., 199 S. W. 417.

33.——Consideration.—Where a stockholder assumes the indebtedness of a corporation in return for a large amount of the stock of a new corporation to be formed, the issuance of some such stock direct to others, who paid nothing therefor, with such stockholder's consent, was not without consideration as to creditors of the new corporation.—Watt v. German Sav. Bank, Iowa, 165 N. W. 897.

34.——Transfer of Stock.—Where a corporation negligently allows its stock, duly made out to an individual, to fall into the hands of the individual, who pledges it to a bona fide plegee for value, the latter acquires title as against the corporation.—American Nat. Bank v. Dew, N. C., 94 S. E. 708.

35.——Watered Stock.—"Watered stock" or fictitiously paid-up stock is stock which is issued as fully paid-up stock, when in fact the whole amount of its par value has not been paid; stock purporting to represent, but which does not in good faith represent, money paid into corporation's treasury, or money's worth actually contributed to its capital.—Lee v. Cameron, Okla., 169 Pac. 17.

36. **Damages**—Evidence.—In action by passenger for damages for being directed to take the wrong train, in consequence of which she was compelled to remain all night in a town not her home, she could not recover for the inconvenience or damages suffered from remaining all night in the depot, where she declined offers of railroad's agents to take her to a hotel or send her home in an automobile.—Southern Ry. Co. v. Pruett, Ala., 77 So. 49.

37. **Deeds**—Heirs.—As a living person has no heirs a deed to the heirs of a living person is, where there was nothing to show that children were intended by the use of the word heirs, a nullity.—Kepler v. Castle, Ill., 117 N. E. 1029.

38. **Eminent Domain**—Due Process of Law.—Subjecting property of a pipe line company to the use of the public in the common carriage of oil constitutes a "taking" thereof and requires just compensation.—Associated Pipe Line Co. v. Railroad Commission of California, Cal., 169 Pac. 62.

39. **Estoppel**—Injunction.—Where creditor accepted indorser upon debtor's representation that indorser owned realty, and found record title to be in indorser, though he had previously conveyed it by unrecorded warranty deed, grantee owed creditor no duty to record it, and was not estopped to enjoin execution sale on creditor's judgment against indorser.—Culp v. Kiene, Kan., 168 Pac. 1097.

40. **Executors and Administrators**—Temporary Administrator.—An administrator ad litem defending disputed claim has the same authority to stipulate as to fees advanced in defending estate against claim which he was appointed to defend, that an executor or administrator would have in defending against claim by any person other than executor or administrator.—In re McManus' Estate, Mo., 199 S. W. 422.

41. **Executors and Administrators**—Will Contest.—The fact that a will is still open to contest at suit of minor or non-resident does not necessarily preclude distribution where the other heirs have made an agreement for distribution under which a sufficient amount will be retained by one heir to pay the claim of the contestant should he succeed.—In re Hinkel's Estate, Cal., 169 Pac. 70.

42. **Exemption** — Family. — Six unmarried brothers living in the same house with their four unmarried sisters and with their aged, widowed father, who was unable to perform labor of any kind, constituted "family" within exemption laws.—Kiggins v. Henne & Meyer Co., Tex., 199 S. W. 494.

43. **False Imprisonment**—Scope of Duty.—Special city policemen, employed by a railroad to prevent theft and make arrests, acted within the scope of their employment in arresting plaintiff, who was ejected from a train for having no ticket, when they did so at the request of the conductor, though without direction from the railway.—Hobbs v. Ill. Cent. R. Co., Iowa, 165 N. W. 912.

44. **Fraud**—Guilty Knowledge.—That seller failed to use reasonable care and observation to ascertain whether his statements were false would not justify jury finding that false representations were made with knowledge of their falsity.—Boyd v. Buick Automobile Co., Iowa, 165 N. W. 908.

45. **Fraudulent Conveyances**—Bulk Sales Law.—The holder of a series of notes is not a "creditor," within the Bulk Sales Act, of an accommodation indorser as to notes maturing after a transfer of his property in bulk, although at the time of paying some which had previously matured some of the subsequent notes had matured.—Adams-Flanigan Co. v. Baselice, N. Y., 167 N. Y. S. 948.

46. **Homestead**—Husband and Wife.—A homestead right attaches to land obtained under a contract of purchase where the purchaser and his wife occupy it as a residence, and a new contract modifying contract of purchase and a lease executed between seller and purchaser, not signed by or consented to by wife, were void.—Walz v. Keller, Kan., 169 Pac. 196.

47. **Homicide**—Violation of Ordinance.—Where auto truck driver approached intersecting street in city without slowing down or giving any signal, at 30 miles an hour, in violation of law of state (Law 1913, c. 107) and ordinance of city, and killed a boy, he was guilty of manslaughter.—State v. McIver, N. C., 94 S. E. 682.

48. **Innkeepers**—Rules and Regulations.—A hotel keeper's rule prohibiting a man from visiting a woman in her room without permission, held no defense to an action against the hotel keeper for damages because of a charge of immorality, where hotel keeper knew that the charge was unfounded.—Boyce v. Greeley Square Hotel Co., N. Y., 168 N. Y. S. 191.

49 **Insurance**—Execution of Contract.—Accident insurance company cannot defeat action on policy because of stipulations or admissions contained in application which insured at instance of insurer's agent signed without reading or knowledge of its contents.—Shinn v. National Travelers' Ben. Ass'n, Kan., 169 Pac. 215.

50.——Recovery.—Recovery on policy was barred by noncompliance with bookkeeping requirements of iron-safe clause, where from records surviving the fire, unaided by insured's memory, it could not be ascertained of what his stock consisted.—Fidelity Phoenix Ins. Co. v. Williams, Ala., 77 So. 156.

51. **Intoxicating Liquors**—Criminal Law.—Under Laws 1909, p. 17, § 25, it is a misdemeanor to deliver intoxicating liquor to any person in any prohibited district, without regard to whether the liquor is intended for sale, or merely for personal use, and notwithstanding the fact that the act does not make mere possession a crime, nor does the fact it was interstate shipment alter the rule.—Kirtley v. Oregon Short Line R. Co., Idaho, 169 Pac. 172.

52. **Joint Adventures**— Accounting.— Widow and administratrix of dramatist held entitled to accounting as against defendant, who engaged in joint adventure with deceased to write play, and who, on co-author's death, appropriated it, and, with co-operation of producer, produced it, in disregard of widow's rights.—Ongley v. Marcin, N. Y., 168 N. Y. S. 30.

53. **Landlord and Tenant**—Waiver.—Where lessee of hotel, who was not to underlet without lessor's written consent, temporarily rented a room to a printer without such consent, the lessor, by previously telling printer that he had no objection, waived right to terminate lease because of underletting.—Norris v. McKee, Kan., 169 Pac. 201.

54. **Larceny**—Intent.—If defendant took possession of a hog for the purpose of protecting his crop and the original taking was not fraudulent, his subsequent appropriation or killing of the hog was not larceny.—Brooks v. State, Tex., 199 S. W. 472.

55. **Libel and Slander**—Instructions.—Alleegd oral charge of treason, made when United States was at peace, could not have been intended to charge plaintiff with adhering to any enemies of United States, or of giving them aid and comfort, and could not have been so understood by the hearers.—Kegerreis v. Van Zile, N. Y., 167 N. Y. S. 874.

56.——Injury to business.—Newspaper, which published report that case of infantile paralysis came from street number where plaintiff was sole tenant, held not liable to plaintiff for injury to business.—Stanger v. Sun Printing & Publishing Ass'n, N. Y., 168 N. Y. S. 266 .

57. **Mandamus**—Inspection of Records.—Assuming common-law right of director to inspect corporate books and records was denied by agents, his proper, if not the only adequate remedy is mandamus.—Leach v. Davy, Mich., 165 N. W. 927.

58. **Master and Servant**—Course of Employment.—Employe of garbage reduction company, who, while loading "tankage" into cars, went upon the roof of building and, while attempting to pull down a rope used in hoisting materials, fell through the skylight and was killed, suffered an "injury in the course of his employment" within Workmen's Compensation Act.—Ross v. Genesee Reduction Co., N. Y., 168 N. Y. S. 51.

59.——Dependency.—Under Workmen's Compensation Act of 1913, married daughters who were not dependent on their father, but to whom he had contributed groceries and other things, were entitled to compensation for his death.—Peabody Coal Co. v. Industrial Board of Illinois, Ill., 117 N. E. 983.

60.——Dependency.—Under Workmen's Compensation Act § 7, par. (b), where watchman left daughter of 22 surviving, to whose support he had contributed within 4 years, she being unable to earn living from sickness, so it was his duty to support under Hurd's Rev. St. 1915-16, c. 107, § 1, employer owed daughter compensation.—Mechanics' Furniture Co. v. Industrial Board of Illinois, Ill., 117 N. E. 986.

61.——Dependency.—Under Laws 1913, p. 340, § 7, par. "b," providing for compensation if deceased leaves any widow, child, parent, grandparent, or other lineal heir to whose support he has contributed, it is not necessary that a father be dependent upon his son in order to entitle him to compensation.—Mallers v. Industrial Board of Illinois, Ill., 117 N. E. 1056.

62.——Dependency.—Under Workmen's Compensation Act, § 29, providing for election between remedies when employe is injured or killed by another's negligence, and for subrogation if compensation is paid, a widow with dependent child may, for herself and child, make an election.—Hanke v. New York Consol. R. Co., N. Y., 168 N. Y. S. 234.

63.——Evidence.—In action for injuries to transfer company's teamster who tripped over nail in bed of wagon from which cleats had been removed, evidence of nailing cleats on some of defendant's wagons without connecting it in any way with wagon plaintiff used was admissible.—Peetz v. St. Louis Transfer Co., Mo., 199 S. W. 433.

64. —— Emergency. — Where a blacksmith, working on a mountain side, was suddenly called to by his helper to "look out," and heard a tree which had been felled by his employer's servants further up the mountain coming down, and being frightened, jumped over a bank, sustaining injuries, he would not be held to the degree of responsibility of one who has time for reflection.—Hargis v. Knoxville Power Co., N. C. 94 S. E. 702.

65.——Fellow Servant.—A section foreman, with power to hire and discharge men and to direct section laborer, is not a fellow servant of laborer as to condition and safety of tools and appliances under his care.—Carnahan v. Chicago, B. & Q. R. Co., Neb., 165 N. W. 956.

66. **Mandamus**—Franchise Duties. — Whenever corporation accepts municipal franchise imposing certain obligations toward public in consideration of rights conferred, it may be compelled by mandate to perform such franchise duties.—State v. Vincennes Traction Co., Ind., 117 N. E. 961.

67. **Master and Servant**—Hazardous Occupation.—Village employe, injured on leaving truck, not operated by village, on which he rode part of way to depot, where he was going to get lead pipe for water pipe work, was not engaged in hazardous occupation.—Spinks v. Village of Marcellus, N. Y., 168 N. Y. S. 69.

68. —— Hazardous Occupation. — Employe, whose sole duty was to feed bundles into combined thresher and cleaner, was neither engaged in hazardous employment of "milling," within Workmen's Compensation Act, § 2, group 29, nor of "operating vehicle," within group 41. —Vincent v. Taylor Bros., N. Y., 168 N. Y. S. 287.

69.——Hazardous Occupation.—Where company in nonhazardous employment hired carpenter by hour to put in shelving, who, when at work, was injured, employer was not liable to pay compensation, under Workmen's Compensation Act.—Geller v. Republic Novelty Works, N. Y., 168 N. Y. S. 263.

70.——Notice.—In female employe's proceedings for compensation under Workmen's Compensation Act, evidence held insufficient to sustain State Industrial Commission's finding that insurer and employer were not prejudiced by claimant's failing to give written notice of injury within 10 days after disability, as required by Workmen's Compensation Law, § 18.—Bloomfield v. November, N. Y., 167 N. Y. S. 975.

71.——Proximate Cause.—That direct cause of injury to servant was animate, being bite of factory engineer's dog, kept on premises with employer's implied knowledge, does not alter result that injury was in course of employment.—Barone v. Brambach Piano Co., N. Y., 167 N. Y. S. 933.

72.——Scope of Employment.—Employe who was run down by another train when he was trying to reach second train to remove therefrom tools used by him, held to be acting within the scope of his employment, so that compensation might be allowed under Workmen's Compensation Act.—Alexander v. Industrial Board, Ill., 117 N. E. 1040.

73.——Suitable Appliances.—Where stave company furnished carpenters repairing building suitable materials to construct scaffold, and one constructed scaffold so defective it fell and injured other, company was not liable for not furnishing reasonable appliances or safe place to work.—Holland-Blow Stave Co. v. Spencer, Ala., 77 So. 65.

74. —— Workmen's Compensation. — Under Workmen's Compensation Act, § 1, par. 3, cl. (c), if an employe was discharged from work upon one building, and a few days later was rehired on another building, there was a new hiring, and the employer, having posted notice as to the new building, was liable only to pay workman's compensation, and not in damages. —Curran v. Wells Bros. Co., Ill., 117 N. E. 984.

75. **Mortgages**—Future Advances.—Mortgage executed by lumber dealer to lumber company to secure future advances, covering only property incumbered by purchase money or other prior liens to amount of market value, held not

fraudulent as to mortgagor's judgment creditor within Code 1907, § 4293.—Manchuria S. S. Co. v. Harry G. G. Donald & Co., Ala., 77 So 12.

76. **Municipal Corporations** — Negligence. — Fact that nothing was attached to cover of coalhole in sidewalk at time of plaintiff's injury by stepping into hole does not tend to show any negligence of defendant lessees and sublessees of premises.—Gunning v. King, Mass., 118 N. E. 233.

77.——Officer.—Where superintendent of municipal street car line in violation of ordinance paid money to city clerk, money held not received by virtue of his office or under color of his office, and his surety was not liable for defalcation.—United States Fidelity & Guarantee Co. v. Yazoo City, Miss., 77 So. 152.

78. **Negligence**—Duty of Master.—A railroad owes no duty to send an engine to remove shanty car in which a servant has been allowed to live and which is endangered by a rising flood.—Matthews v. Carolina & N. W. Ry. Co., N. C., 94 S. E. 714.

79.——Invitee.—An expressman, who was to carry properties from defendant's theatre for use by theatrical company in which defendant was interested, held an "invitee" for whose benefit defendant was bound to exercise ordinary care.—McCullen v. Fishell Bros. Amusement Co., Mo., 199 S. W. 439.

80.——Licensee.—Where plumbers in making repairs to defendant's toilet opened a trapdoor in the floor to turn off the water, and while working there the plaintiff, a bare licensee, for his own benefit entered and fell into opening though the room was lighted, defendant was not guilty of an "affirmative act" of negligence.—Vaughan v. Transit Development Co., N. Y., 118 N. E. 219.

81.——Mitigating Damage.—Where statutes prescribing precautions to prevent collisions applies, negligence of person injured on railroad track can only be taken in mitigation of damages.—Chattanooga Station Co. v. Harper, Tenn., 199 S. W. 394.

82. **Parent and Child**—Costody of Estate.—Father has no right by reason of parental relation to custody of estate of his minor child, and so payment to father of judgment rendered in favor of infant does not satisfy judgment.—Paskewie v. East St. L. & S. Ry. Co., Ill., 117 N. E. 1035.

83.——Irrevocable Contract.—A father cannot irrevocably contract away his right respecting the custody of a minor child.—Marks v. Wooster, Mo., 199 S. W. 446.

84. **Principal and Agent**—Notice to Agent.—The general rule is that the principal is bound by the knowledge of the agent; but where to disclose information would violate professional confidence, or be inimicable to the agent's interest, or where the circumstances are such that, in all reasonable probability, the principal was not informed, there is no such presumption.—Watt v. German Sav. Bank, Iowa, 165 N. W. 897.

85. **Railroads**—Crossing.—In action against railroad for death on crossing, instruction that deceased had equal right to travel with automobile on road at intersection with railroad as railroad had to run trains at point, was improper as confusing and misleading.—Baker v. Collins, Tex., 199 S. W. 519.

86.——Switching Operation.— Terminal railway company nightly moving sleeping car between two stations held engaged in "switching operation" while so doing, so that statutory precautions for prevention of railway accidents did not apply.—Chattanooga Station Co. v. Harper, Tenn., 199 S. W. 394.

87. **Removal of Causes**—Filing Petition for.—Under federal Judicial Code, § 29, defendant, who acquiesced in order extending time for filing of pleadings, loses his right to remove cause to federal court on ground of diversity of citizenship upon petition filed after expiration of time for filing answer fixed by law, though order was one usually made in such cases without request by parties.—Dills v. Champion Fiber Co., N. C., 94 S. E. 694.

88. **Sales**—Breach of Warrant.—Measure of damages for breach of implied warranty of machine sold was not necessarily amount buyer had paid, but was difference between value of machine had it been suitable and what it was actually worth.—Holcomb & Holke Mfg. Co. v. Cataldo, Mich., 165 N. W. 941.

89.——Instructions.—In action for fraud of seller in representing that engine of electric bus was new, admission of testimony that after sale it was discovered that numbers on engine had been chiseled off held error.—Boyd v. Buick Automobile Co., Iowa, 165 N. W. 908.

90.—Stipulations—Taxing Costs.—Stipulation that advancement of money to pay stenographers and a referee should be taxed as costs becomes law of the case as between the signing parties.—In re McManus' Estate, Mo., 199 S. W. 422.

91. **Street Railroads** — Franchise Duty. — Where franchise provides only that street railway company shall keep street between its tracks in repair, no obligation rests on company to pave or otherwise improve street.—State v. Vincennes Traction Co., Ind., 117 N. E. 961.

92. **Sunday**— Moving Picture Show. — The operation of a moving picture show on Sunday is not a work of "daily necessity," within the exception in Kirby's Dig. § 2030, forbidding Sunday labor.—Rosenbaum v. State, Ark., 199 S. W. 388.

93. **Telegraphs and Telephones**—Contributory Negligence.—In action for personal injury to one hunting from telephone wire hanging across public highway, that plaintiff did not have a hunter's license in violation of the hunter's license law, did not contribute in any degree to his injury.—Walmsley v. Rural Telephone Ass'n of Delphos, Kan., 169 Pac. 197.

94.——Undisclosed principal.—An undisclosed principal cannot recover damages for negligent failure of telegraph company to promptly deliver a message to his agent.—Western Union Telegraph Co. v. Lowden, Miss., 77 So. 145.

95. **Trust**—Evidence.—To establish trust in money received by H. from K. as part of that stolen by K. from plaintiff, particular pieces of money need not be identified, but it is enough that, among those taken by K., there is enough of each kind to make up those received by H. from K.—Schramm-Johnson Drugs v. Kleeb, Utah, 169 Pac. 161.

96.——Resulting Trust.—Where third person takes title in his own name to land, although another pays consideration, and though a conveyance by one who took title to one paying consideration was void, nevertheless one paying consideration was owner of land by virtue of the resulting trust.—Kepler v. Castle, Ill., 117 N. E. 1029.

97. **Wills**—Construction.—In will prohibiting division of property until youngest child reached 21, and that if any child died without issue, his share should be divided among other children "then living," quoted words refer to date of division, and estate vests when youngest child reaches 21.—Whitfield v. Douglass, N. C., 94 S. E. 667.

98.——Construction.—Where testator devised realty and personalty to his two children, providing that, in event his son "shall die without issue living at the time of his death," his share should go to the other child, his language had a fixed legal meaning, and referred to the death of the son within the lifetime of the testator.—Hall v. Bauchert, Ind., 117 N. E. 972.

99.——Undue Influence.—Where will was asserted to be result of undue influence, evidence that, a few months after its execution, testatrix and proponent indulged in unnatural and illicit intercourse, is admissible to overcome presumption of validity of will arising from testatrix's failure to revoke or destroy it before her death.—Beadle v. McCrabb, Tex., 199 S. W. 355.

100.——Revocation.—Where a feme sole executed a will in 1869 and thereafter married, her marriage did not revoke the will; Laws 1866-67, c. 496, and subsequent legislation, having removed the disabilities of coverture.—Lee v. Blewett, Miss., 77 So. 147.